

CHAPTER 137F
FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

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137F.1 Definitions.

For the purpose of this chapter:

1. *"Bed and breakfast home"* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.

2. *"Commissary"* means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment's own food establishment outlets.

3. *"Department"* means the department of inspections and appeals.

4. *"Director"* means the director of the department of inspections and appeals.

5. *"Farmers market"* means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.

6. *"Food"* means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.

7. *"Food establishment"* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. *"Food establishment"* does not include the following:

- a. A food processing plant.
- b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
- c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
- d. Premises which are a home food establishment pursuant to chapter 137D.

- e. Premises where a person operates a farmers market, if potentially hazardous food is not sold or distributed from the premises.
 - f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.
 - g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
 - h. A private home that receives catered or home-delivered food.
 - i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
 - j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.
 - k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.
 - l. Premises covered by a current class "A" beer permit as provided in chapter 123.
 - m. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
8. *"Food processing plant"* means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. *"Food processing plant"* does not include any of the following:
- a. A premises covered by a class "A" beer permit as provided in chapter 123.
 - b. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
 - c. A premises covered by a class "A" wine permit or a class "B" wine permit as provided in chapter 123.
9. *"Mobile food unit"* means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.
10. *"Municipal corporation"* means a political subdivision of this state.
11. *"Perishable food"* means potentially hazardous food.
12. *"Potentially hazardous food"* means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. *"Potentially hazardous food"* includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. *"Potentially hazardous food"* does not include the following:
- a. An air-cooled hard-boiled egg with shell intact.
 - b. A food with a water activity value of 0.85 or less.
 - c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.
 - d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.
13. *"Pushcart"* means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

14. *"Regulatory authority"* means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

15. *"Temporary food establishment"* means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

16. *"Vending machine"* means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

17. *"Vending machine location"* means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

98 Acts, ch 1162, §6, 30; 99 Acts, ch 192, §33; 99 Acts, ch 208, §28; 2001 Acts, ch 81, §1, 2; 2002 Acts, ch 1149, §1, 3; 2003 Acts, ch 44, §37; 2006 Acts, ch 1032, §4; 2007 Acts, ch 215, §210, 211

Referred to in § 100.35, 137C.35, 189A.3, 190C.1

137F.2 Adoption by rule.

The department shall, in accordance with chapter 17A, adopt rules setting minimum standards for entities covered under this chapter to protect consumers from foodborne illness. In so doing, the department may adopt by reference, with or without amendment, the United States food and drug administration food code, which shall be specified by title and edition, date of publication, or similar information. The rules and standards shall be formulated in consultation with municipal corporations under agreement with the department, affected state agencies, and industry, professional, and consumer groups.

98 Acts, ch 1162, §7, 30; 99 Acts, ch 208, §29--32; 2001 Acts, ch 81, §3; 2007 Acts, ch 215, §212

Referred to in § 137C.6, 137F.3, 331.756(32)

Continuing effectiveness of 1997 edition of United States food and drug administration food code pending adoption of rules under this section; 2007 Acts, ch 215, §220

137F.3 Authority to enforce.

1. The director shall regulate, license, and inspect food establishments and food processing plants and enforce this chapter pursuant to rules adopted by the department in accordance with chapter 17A. Municipal corporations shall not regulate, license, inspect, or collect license fees from food establishments and food processing plants, except as provided in this section.

2. A municipal corporation may enter into an agreement with the director to provide that the municipal corporation shall license, inspect, and otherwise enforce this chapter within its jurisdiction. The director may enter into the agreement if the director finds that the municipal corporation has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 if it also agrees to enforce the Iowa hotel sanitation code pursuant to section 137C.6. However, the department shall license and inspect all food processing plants which manufacture, package, or label food products. A municipal corporation may license and inspect, as authorized by this section, food processing plants whose operations are limited to the storage of food products.

3. If the director enters into an agreement with a municipal corporation as provided by this section, the director shall provide that the inspection practices of a municipal corporation are spot-checked on a regular basis.

4. A municipal corporation that is responsible for enforcing this chapter within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

a. The total number of licenses granted or renewed by the municipal corporation under this chapter during the year.

b. The number of licenses granted or renewed by the municipal corporation under this chapter during the year in each of the following categories:

(1) Food establishments.

(2) Food processing plants.

(3) Mobile food units and pushcarts.

(4) Temporary food establishments.

(5) Vending machines.

c. The amount of money collected in license fees during the year.

d. The amount expended to perform the functions required under the agreement, submitted on a form prescribed by the department.

e. Other information the director requests.

5. The director shall monitor municipal corporations which have entered into an agreement pursuant to this section to determine if they are enforcing this chapter within their respective jurisdictions. If the director determines that this chapter is not enforced by a municipal corporation, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

6. The inspection staff of a municipal corporation that has entered into an agreement with the director to enforce this chapter shall be required by the department to apply the current rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 to ensure consistency in application of the rules. A municipal corporation's failure to comply may result in the department rescinding the agreement with the municipal corporation, after reasonable notice and an opportunity for a hearing.

98 Acts, ch 1162, §8, 30; 2007 Acts, ch 215, §213

Referred to in § 137F.1

137F.3A Municipal corporation inspections – contingent appropriation.

1. If a municipal corporation operating pursuant to a chapter 28E agreement with the department of inspections and appeals to enforce this chapter and chapters 137C and 137D either fails to renew the agreement effective after April 1, 2007, or discontinues, after April 1, 2007, enforcement activities in one or more jurisdictions during the agreement time frame, or the department of inspections and appeals cancels an agreement after April 1, 2007, due to noncompliance with the terms of the agreement, the department of inspections and appeals may employ additional full-time equivalent positions to enforce the provisions of the chapters, with the approval of the department of management. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly for food inspections to the department of inspections and appeals. The

department of inspections and appeals may hire no more than one full-time equivalent position for each six hundred inspections required pursuant to this chapter and chapters 137C and 137D.

2. Notwithstanding chapter 137D, and sections 137C.9 and 137F.6, if the conditions described in this section are met, fees imposed pursuant to that chapter and those sections shall be retained by and are appropriated to the department of inspections and appeals each fiscal year to provide for salaries, support, maintenance, and miscellaneous purposes associated with the additional inspections. The appropriation made in this subsection is not applicable in a fiscal year for which the general assembly enacts an appropriation made for the purposes described in this subsection.

2006 Acts, ch 1185, §46, 53; 2007 Acts, ch 215, §214, 221

137F.4 License required.

A person shall not operate a food establishment or food processing plant to provide goods or services to the general public, or open a food establishment to the general public, until the appropriate license has been obtained from the regulatory authority. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. A license shall expire one year from the date of issue. A license is renewable. All licenses issued under this chapter that are not renewed by the licensee on or before the expiration date shall be subject to a penalty of ten percent per month of the license fee if the license is renewed at a later date.

98 Acts, ch 1162, §9, 30

137F.5 Application for license.

An application form prescribed by the department for a license under this chapter shall be obtained from the department or from a municipal corporation which is a regulatory authority. A completed application shall be submitted to the appropriate regulatory authority.

The dominant form of business shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and of a food processing plant.

The regulatory authority where the unit is domiciled shall issue a license for a mobile food unit.

An application for renewal of a license shall be made at least thirty days before the expiration of the existing license.

98 Acts, ch 1162, §10, 30

137F.6 License fees.

1. The regulatory authority shall collect the following annual license fees:

- a. For a mobile food unit or pushcart, twenty-seven dollars.
- b. For a temporary food establishment per fixed location, thirty-three dollars and fifty cents.
- c. For a vending machine, twenty dollars for the first machine and five dollars for each additional machine.
- d. For a food establishment which prepares or serves food for individual portion service intended for consumption on-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

- (1) Annual gross sales of under fifty thousand dollars, sixty-seven dollars and fifty cents.

(2) Annual gross sales of at least fifty thousand dollars but less than one hundred thousand dollars, one hundred fourteen dollars and fifty cents.

(3) Annual gross sales of at least one hundred thousand dollars but less than two hundred fifty thousand dollars, two hundred thirty-six dollars and twenty-five cents.

(4) Annual gross sales of two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred seventy-five dollars.

(5) Annual gross sales of five hundred thousand dollars or more, three hundred three dollars and seventy-five cents.

e. For a food establishment which sells food or food products to consumer customers intended for preparation or consumption off-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

(1) Annual gross sales of under ten thousand dollars, forty dollars and fifty cents.

(2) Annual gross sales of at least ten thousand dollars but less than two hundred fifty thousand dollars, one hundred one dollars and twenty-five cents.

(3) Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifty-five dollars and twenty-five cents.

(4) Annual gross sales of at least five hundred thousand dollars but less than seven hundred fifty thousand dollars, two hundred two dollars and fifty cents.

(5) Annual gross sales of seven hundred fifty thousand dollars or more, three hundred three dollars and seventy-five cents.

f. For a food processing plant, the annual license fee shall correspond to the annual gross food and beverage sales of the food processing plant, as follows:

(1) Annual gross sales of under fifty thousand dollars, sixty-seven dollars and fifty cents.

(2) Annual gross sales of at least fifty thousand dollars but less than two hundred fifty thousand dollars, one hundred thirty-five dollars.

(3) Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred two dollars and fifty cents.

(4) Annual gross sales of five hundred thousand dollars or more, three hundred thirty-seven dollars and fifty cents.

g. For a farmers market where potentially hazardous food is sold or distributed, one seasonal license fee of one hundred dollars for each vendor on a countywide basis.

h. A food establishment covered by paragraphs "*d*" and "*e*" shall be assessed license fees not to exceed seventy-five percent of the total fees applicable under both paragraphs.

2. If an establishment licensed under subsection 1, paragraph "*d*" or "*e*", has had a person in charge for the entire previous twelve-month period who holds an active certified food protection manager certificate from a program approved by the conference on food protection and the establishment has not been issued a critical violation during the previous twelve-month period, the establishment's license fee for the current renewal period shall be reduced by fifty dollars.

3. Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by the municipal corporation for regulation of food establishments and food processing plants licensed under this chapter.

4. Each vending machine licensed under this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing the licensee's business address and phone number, and a company license number assigned by the regulatory authority.

98 Acts, ch 1162, §11, 30; 2002 Acts, ch 1149, §2, 3; 2003 Acts, ch 108, §128, 132; 2007 Acts, ch 215, §215

Referred to in § 137F.3A

137F.7 Suspension or revocation of licenses.

The regulatory authority may suspend or revoke a license issued to a person under this chapter pursuant to rules adopted by the department if any of the following occurs:

1. The person's food establishment or food processing plant does not conform to a provision of this chapter or a rule adopted pursuant to this chapter.
2. The person conducts an activity constituting a criminal offense in the food establishment or food processing plant and is convicted of a serious misdemeanor or a more serious offense as a result.

A licensee may appeal a suspension or revocation in accordance with rules adopted by the department.

98 Acts, ch 1162, §12, 30

137F.8 Farmers markets.

A vendor who offers a product for sale at a farmers market shall have the sole responsibility to obtain and maintain any license required to sell or distribute the product.

98 Acts, ch 1162, §13, 30

137F.9 Operation without inspection prohibited.

A person shall not open or operate a food establishment or food processing plant until an inspection has been made and a license has been issued by the regulatory authority. Inspections shall be conducted according to standards adopted by rule of the department pursuant to chapter 17A.

A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

98 Acts, ch 1162, §14, 30

137F.10 Regular inspections.

The appropriate regulatory authority shall provide for the inspection of each food establishment and food processing plant in this state in accordance with this chapter and with rules adopted pursuant to this chapter in accordance with chapter 17A. A regulatory authority may enter a food establishment or food processing plant at any reasonable hour to conduct an inspection. The manager or person in charge of the food establishment or food processing plant shall afford free access to every part of the premises and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection. As part of the inspection process, the regulatory authority shall provide an explanation of the violation or violations cited and provide guidance as to actions for correction and elimination of the violation or violations.

98 Acts, ch 1162, §15, 30; 2007 Acts, ch 215, §216

137F.11 Inspection upon complaint.

Upon receipt of a complaint by a customer of a food establishment or food processing plant stating facts indicating the premises are in an unsanitary condition, the regulatory authority may conduct an inspection.

98 Acts, ch 1162, §16, 30

137F.11A Posting of inspection reports.

An establishment inspected under this chapter shall post the most recent routine inspection report, along with any current complaint or reinspection reports, in a location at the establishment that is readily visible to the public.

2007 Acts, ch 215, §217

137F.12 Plumbing.

A food establishment or food processing plant shall have an adequately designed plumbing system conforming to at least the minimum requirements of the state plumbing code, or local plumbing code, whichever is more stringent. The plumbing system shall have a connection to a municipal water and sewer system or to a benefited water district or sanitary district if such facilities are available.

98 Acts, ch 1162, §17, 30

137F.13 Water and waste treatment.

If a food establishment or food processing plant is served by privately owned water or waste treatment facilities, those facilities shall meet the technical requirements of the local board of health and the department of natural resources.

98 Acts, ch 1162, §18, 30

137F.14 Toilets and lavatories.

A food establishment or food processing plant shall provide toilet and lavatory facilities in accordance with rules adopted by the department pursuant to this chapter in accordance with chapter 17A.

98 Acts, ch 1162, §19, 30

137F.15 Fire safety.

A violation of a fire safety rule adopted pursuant to section 100.35 and applicable to food establishments or food processing plants which occurs on the premises of a food establishment or food processing plant is a violation of this chapter.

98 Acts, ch 1162, §20, 30

137F.16 Conflicts with state building code.

Provisions of this chapter in conflict with the state building code, as adopted pursuant to section 103A.7, shall not apply where the state building code has been adopted or when the state building code applies throughout the state.

98 Acts, ch 1162, §21, 30; 2004 Acts, ch 1086, §40

137F.17 Penalty.

A person who violates this chapter or rules adopted pursuant to this chapter shall be subject to a civil penalty of one hundred dollars for each violation.

98 Acts, ch 1162, §22, 30

137F.18 Injunction.

A person opening or operating a food establishment or food processing plant in violation of this chapter may be enjoined from further operation of the establishment or plant. If an

imminent health hazard exists, the establishment or plant must cease operation. Operation shall not be resumed until authorized by the regulatory authority.

98 Acts, ch 1162, §23, 30

137F.19 Duty of county or city attorney.

The county attorney in each county or city attorney in each city shall assist in the enforcement of this chapter.

98 Acts, ch 1162, §24, 30

Referred to in § 331.756(32)